

Decision **DRAFT DECISION OF ALJ O'DONNELL** (Mailed 5/28/2002)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Application of Worldwide
Telecommunications Corporation for Registration
As An Interexchange Carrier Telephone
Corporation Pursuant to Public Utilities Code
Section 1013.

Application 99-04-042
(Filed April 26, 1999)

O P I N I O N**I. Summary**

In this decision, we grant the motion of Worldwide Telecommunications Corporation (Applicant) to withdraw its application. In addition, we find that documents related to Applicant's corporate existence may be relevant to the fitness to serve of Clear World Communications Corporation (Clear World) being addressed in Application (A.) 01-09-040. Therefore, we require Applicant to appoint a custodian of records, and preserve all existing documents related to Applicant's corporate existence for a period of two years, or until A.01-09-040 is closed, whichever is later. We also require Applicant to provide a written explanation of any role Clear World may have had in the relationship between Applicant and World Tel Services, Inc. (WTC), or in Applicant's provision of telephone services. In addition, we require Applicant to provide a written acceptance of the conditions imposed herein.

II. Background

Applicant, a California corporation, filed this application requesting a certificate of public convenience and necessity (CPCN) to resell interexchange

service. On June 7, 1999, Incomnet Communications Corporation (ICC) filed a protest to the application. On August 31, 1999, the assigned Administrative Law Judge (ALJ) issued a ruling requesting that applicant provide answers to a series of questions raised by the ICC protest. Applicant filed its response on September 27, 1999. On October 20, 1999, ICC filed a motion to withdraw from the proceeding due to the fact that it had filed for bankruptcy. On November 5, 1999, the assigned ALJ issued a ruling granting the motion.

On April 10, 2002, the Commission's Consumer Services Division (CSD) filed a motion to intervene, and to consolidate this application with A.01-09-040. On April 24, 2002, Applicant filed a motion to withdraw the application. It represented that it is no longer providing telecommunications services in California. On April 30, 2002, CSD mailed a letter to the ALJ, with a copy to Applicant and Clear World. In the letter, it said that it did not oppose the withdrawal of the application, but asked that certain conditions be imposed as a condition of approval of the withdrawal.

III. ICC's Protest

In its protest, ICC alleged that Applicant was not technically or financially fit to receive the requested CPCN. In support of its allegation ICC alleged the following.

- A. Applicant operated as a reseller since July 1998 without a CPCN in violation of Pub. Util. Code §§ 1001 and 1013.
- B. Applicant misrepresented to the public that it was selling the telephone services of WTC, a certified carrier.
- C. Applicant misrepresented itself to CSD in response to CSD's inquiry into its operations.

- D. Applicant transferred utility subscribers to itself without authorization pursuant to Pub. Util. Code § 851.
- E. Applicant did not disclose to the Commission that one of its principals has been convicted of felony mail fraud.
- F. Applicant did not provide verifiable financial information to support its financial fitness.

IV. Discussion

Applicant provided interexchange services pursuant to an agency agreement with WTC. By this application it sought to establish itself as a certificated carrier in its own right. ICC's allegations concerned the validity of Applicant's agency agreement with WTC, and Applicant's actions as an agent. Given that Applicant seeks to withdraw the application, that it no longer provides telecommunications services in California, and that ICC has withdrawn from this proceeding, ICC's allegations are moot as far as this proceeding is concerned.

A.01-09-040 was filed by Clear World for a CPCN to provide local exchange services. CSD has protested the application. In this proceeding, CSD asks that the following conditions be imposed on the dismissal of this application:

- The record in A.99-04-042, including the exhibits attached to ICC's protest, and Applicant's response should be incorporated into the record in A.01-09-040;
- Applicant should be required to appoint a custodian of records, and all existing documents related to Applicant's corporate existence should be preserved for the pendency of A.01-09-040, and produced on the request of CSD or the ALJ; and

- Applicant should provide a written explanation of any role Clear World may have had in the relationship between Applicant and WTC, or in Applicant's provision of telephone services.

Both applications involve members of the same family. Applicant's owner, Joseph Mancuso, is a 5% owner of Clear World. Christopher Mancuso was previously convicted of mail fraud. He provided services to Applicant, and is the partial owner and operator of a company that provides services to Clear World. Other family members were involved in Applicant's operations, and are involved in Clear World's operations. Therefore, Applicant's business practices in general and, in particular, the allegations made by ICC, may be relevant to the fitness of Clear World.

CSD's request to have the record in A.99-04-042 incorporated into the record in A.01-09-040 should be addressed in that proceeding. Therefore, we will not grant it in this proceeding.

Since both applications involve members of the same family, and Applicant's documents may be relevant to Clear World's fitness to serve, CSD's request that Applicant be required to appoint a custodian of records, and that all existing documents related to Applicant's corporate existence be preserved for the pendency of A.01-09-040 is reasonable. The request will be granted. We will also require Applicant, as a condition of granting its request, to produce such documents upon the written request of the Commission or its staff.

Any role Clear World may have had in the relationship between Applicant and WTC, or in Applicant's provision of telephone services may be relevant to Clear World's fitness to serve. Therefore, CSD's request that Applicant provide a written explanation of such role, if any, is reasonable and will be granted.

We will grant Applicant's request subject to the conditions discussed above. We will also require Applicant to file a written acceptance of the conditions imposed, prior to closing this proceeding, to ensure that Applicant understands and accepts them.

In order to remove this proceeding from the Commission's docket, and to facilitate resolution of A.01-09-040, this order should be effective upon the filing of a written acceptance of the conditions imposed.

V. Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Section 311(g)(1) of the Public Utilities Code and Rule 77.1 of the Rules of Practice and Procedure.

Findings of Fact

1. Applicant provided interexchange services pursuant to an agency agreement with WTC.
2. Applicant is no longer providing telecommunications services in California.
3. ICC's allegations concerned the validity of Applicant's agency agreement with WTC, and Applicant's actions as an agent.
4. Both applications involve members of the Mancuso family.
5. Applicant's owner, Joseph Mancuso, is a 5% owner of Clear World.
6. Christopher Mancuso was previously convicted of mail fraud.
7. Christopher Mancuso provided services to Applicant, and is the partial owner and operator of a company that provides services to Clear World.
8. Other Mancuso family members were involved in Applicant's operations, and are involved in Clear World's operations.

9. Documents related to Applicant's corporate existence may be relevant to Clear World's fitness to serve.

10. Any role Clear World may have had in the relationship between Applicant and WTC, or in Applicant's provision of telephone services may be relevant to Clear World's fitness to serve.

Conclusions of Law

1. Applicant's business practices in general and, in particular, the allegations made by ICC, and may be relevant to the fitness of Clear World.

2. Applicant should be required to appoint a custodian of records.

3. All existing documents related to Applicant's corporate existence should be preserved.

4. Applicant should be required, as a condition of granting its request, to produce such documents upon the written request of the Commission or its staff.

5. Since any role Clear World may have had in the relationship between Applicant and WTC, or in Applicant's provision of telephone services may be relevant to Clear World's fitness to serve, CSD's request that Applicant provide a written explanation of such roll, if any, is reasonable and should be granted.

6. Applicant's motion to withdraw its application should be granted subject to the conditions noted herein.

7. In order to remove this proceeding from the Commission's docket, and to facilitate resolution of A.01-09-040, this order should be effective upon the filing of a written acceptance of the conditions imposed.

O R D E R

IT IS ORDERED that:

1. The motion of Worldwide Telecommunications Corporation (Applicant) to withdraw its application is granted subject to the following conditions.

2. Applicant shall appoint a custodian of records, and all existing documents related to Applicant's corporate existence shall be preserved for a period of two years, or until Application (A.)01-09-040 is closed, whichever is later.

3. Applicant shall produce the above documents upon written request of the Commission or its staff in a timely manner.

4. Applicant shall provide a written explanation of any role Clear World Communications Corporation may have had in the relationship between Applicant and World Tel Services, Inc., or in Applicant's provision of telephone services. The explanation shall be filed in this proceeding, and filed and served on all parties in A.01-09-040, within 20 days of the effective date of this decision.

5. Applicant shall file a written acceptance of the conditions imposed herein no later than 10 days after the effective date of this decision. A copy of the filing shall be served on all parties in A.01-09-040, including the assigned Administrative Law Judge.

6. Upon compliance with Ordering Paragraph 5, and subject to the conditions imposed above, this proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.